



Information **UPDATE**

Wisconsin Department of Public Instruction/Elizabeth Burmaster, State Superintendent/P.O. Box 7841/ Madison, WI 53707-7841

BULLETIN NO. 02.05

August 2002

TO: District Administrators, CESA Administrators, CCDEB Administrators,
Directors of Special Education and Pupil Services, and Other Interested Parties

FROM: Carolyn Stanford Taylor, Assistant State Superintendent
Division for Learning Support: Equity and Advocacy

SUBJECT: Results of 2001-2002 Onsite Compliance Reviews of Local Educational Agencies

During the 2001-02 school year, the Wisconsin Department of Public Instruction (WDPI) conducted onsite compliance reviews of 70 local educational agencies (LEAs). The purpose was to determine the extent to which LEAs are implementing correctly certain requirements of the Individuals with Disabilities Education Act (IDEA) and state law. This bulletin reports common errors found by the department's review of LEAs' implementation of specific legal requirements and offers guidance relating to their implementation.

In fall 2001, the Special Education Team posted at its website a record review checklist that addresses special education requirements reviewed in 2001-02. The department encouraged all LEAs to conduct self-assessments using the checklist. The department also includes self-assessment as an important component of its onsite compliance reviews of LEAs. We hope the guidance offered in this bulletin will assist LEAs in their self-assessments.

The department's compliance review tools for the 2002-03 school will be located on the Internet at <http://www.dpi.state.wi.us/dpi/dlsea/een/monitor.html> and will be available by September 1, 2002. LEAs scheduled for onsite compliance reviews during the 2002-03 school year will receive specific instructions regarding these tools before the review. LEAs not reviewed by the department during the 2002-03 year are encouraged to conduct a self-assessment of student records using this bulletin and the record review checklist.

During the 2002-2003 school year, we will continue to include in onsite compliance reviews the notice required under 34 CFR 300.561 and s. 115.777(3)(d), Wis. Stats., (child-find notice). At least annually and before any major child-find activity, each LEA must notify parents of their rights with regard to pupil records. The notice may be given through such means as public announcements, written notices, or paid advertisements. In addition, at least annually, each LEA must inform parents and others required to make referrals about the agency's referral and evaluation procedures. Attached to this bulletin is a revised notice that may be adapted to meet these requirements. The notice is also available in English, Spanish, and Hmong through the Internet at http://www.dpi.state.wi.us/dpi/dlsea/een/form_int.html.

Procedures for Accepting and Processing Referrals

The Wisconsin Department of Public Instruction does not discriminate on the basis of sex, race, religion, age, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.

Requirement. Licensed LEA staff and others named at s. 115.777(1)(a), Wis. Stats., who reasonably believe a child is a child with a disability have a duty to refer the child to the LEA for an IEP team evaluation. Each LEA must establish written procedures for accepting and processing these referrals. The referral procedures must address referrals from school staff, parents, and others in the community. These procedures are not included in the DPI's *LEA Model Policies and Procedures*.

LEAs use various models of early and ongoing collaboration and intervention in addition to the special education referral process. Some LEAs use "teacher assistance teams" or "student intervention teams" to develop interventions. Such interventions should be initiated early to address the educational needs of children experiencing difficulties in school. The department recognizes the value of these approaches. However, prereferral interventions may not delay the LEA's accepting and processing of special education referrals. The LEA's procedures cannot require a referring person to obtain the permission, approval, or agreement of others before the LEA accepts a referral. Further, the procedures cannot require a person who has formed a belief that a child is a child with a disability to defer a referral pending the outcome of pre-referral interventions.

Finding. Results from 2001-2002 suggest improved compliance with this requirement. However, errors continue. Some LEAs have not established written procedures for accepting and processing referrals. Others with such procedures require a referring person to obtain the agreement of a team or require a series of educational interventions before a referral will be accepted. Some LEA policies require one or more individuals to review the referral before it reaches the individual designated to accept referrals. Such a policy may result in the referral being impermissibly delayed. Some policies do not address referrals from parents and individuals in the community who are required to make referrals.

Timely Notice

Requirement. An LEA must provide a child's parents with a written notice of its intent to evaluate or re-evaluate a child a reasonable time before it initiates a child's evaluation or re-evaluation. The first step in the evaluation process is a review of existing evaluation data on the child by the individualized education program (IEP) team participants to identify what additional data, if any, are needed to complete an evaluation or re-evaluation. Therefore, the child's parents must receive a notice of the evaluation or re-evaluation before the IEP team begins to review existing evaluation data on the child. Transmittal of a properly completed Form A-2 or A-6 of the DPI Sample Forms to the child's parents a reasonable time before the review meets this requirement. These forms can be accessed at http://www.dpi.state.wi.us/dpi/dlsea/een/form_int.html.

Finding. Some LEAs failed to provide the child's parents with the required notice before the IEP team began its review of existing evaluation data on the child to identify what additional data, if any, are needed to complete an evaluation or re-evaluation. Some LEAs documented case reviews completed by problem-solving teams (teacher assistance teams, student assistance teams) prior to referral for special education, instead of IEP team reviews to determine whether additional evaluation data was needed to complete the IEP team evaluation. Other LEAs conducted IEP team reviews to identify what additional data, if any, were needed to complete an evaluation or re-evaluation, but mailed notices of evaluation (forms A-2 or A-6) after conducting the review.

Requirement. An LEA must provide a child's parents prior written notice of a change in the provision of free appropriate public education (FAPE) to the child or of a change in educational placement. The notice must be sent so that the parents receive it a reasonable time before the LEA starts to implement a revised IEP or begins a new placement for the child. Forms I-16 or I-17 of the DPI Sample Forms, when properly completed and sent timely with a copy of the IEP, will satisfy the notice requirements.

Finding. After reviewing and revising IEPs, some LEAs failed to provide notices of placement to parents before the implementation dates of revised IEPs. Therefore, parents were not provided with prior written notices of IEP changes. This situation occurred because annual meetings to review and revise IEPs were conducted too

close to IEP one-year anniversary dates. Parents received the written notices about the revised IEPs in the mail after the changes were implemented.

Reviews of Existing Evaluation Data Prior to Completing Evaluations

Requirement. The IEP team, including the parent, is required to review existing evaluation data on the child and identify what additional data, if any, are needed to complete an evaluation or re-evaluation. The law does not require a meeting for this purpose. At a minimum, the IEP team includes the child's parents, at least one special education teacher, at least one regular education teacher (if the child is or may be participating in regular education), and a LEA representative.

Finding. Results of 2001-2002 compliance reviews suggest improving compliance with the parent participation requirements for reviewing existing evaluation data. However, errors continue. Some LEAs failed to properly document that the child's parents were contacted to review existing evaluation data. In some LEAs the documentation does not identify the information reviewed or the specific date and method of contact or the parent's input. Regular education teachers did not participate in some of the reviews. Principals serving as LEA representatives did not participate in some reviews of existing evaluation data. Further, LEAs did not properly document that special education teachers and LEA representatives participated in reviewing existing data prior to IEP team determinations of eligibility or continuing eligibility. Form I-1 of the DPI Sample Forms may be used to document the date of contact, the method, the data reviewed, and each participant's input.

Considering Existing Data at the IEP Team Evaluation Meeting

Requirement. As part of an initial evaluation or a re-evaluation, the IEP team participants must review existing evaluation data on the child at the IEP team evaluation meeting. This information includes previous interventions and the effects of those interventions.

Finding. Some LEAs documented that IEP team participants reviewed previous interventions at IEP team meetings but failed to document that the team reviewed the effects of those interventions.

Present Level of Educational Performance (PLOEP)

Requirement. The PLOEP statement must include baseline data corresponding to each of the measurable annual goal statements. If test scores (e.g., grade-equivalent or percentile scores) are used, they must be presented in a manner that is understandable to all, including parents. The law also requires that a PLOEP statement address how the child's disability affects the child's involvement and progress in the general curriculum (the curriculum taught to nondisabled students) or, for preschool students, how the disability affects the child's participation in appropriate activities. "Appropriate activities" refers to age-relevant developmental abilities or milestones that typically developing children of the same age would be performing or would have achieved. The IEP team's determination of how each child's disability affects involvement and progress in the general curriculum is a primary consideration in the development of the IEP. The PLOEP statement provides a basis for determining what accommodations the child needs in order to participate in the general curriculum.

Finding. Many PLOEPs do not include baseline information from which to measure progress on annual goals. This error was the most frequently cited error in onsite compliance reviews during 2001-2002. The results of the department's 2001-2002 reviews suggest improving compliance with the requirement to describe the effects of the child's disability on performance. However, errors continue with this requirement. Some PLOEP statements do not include how each child's disability affects the child's involvement and progress in the general curriculum or, for preschoolers, how the disability affects the child's participation in age-appropriate activities. Some PLOEP statements consist of test scores without explanation.

Measurable Annual Goals, Benchmarks, and Short-Term Objectives

Requirement. Each IEP must include a statement of measurable annual goals, including benchmarks or short-term objectives, related to meeting the child's needs that result from the child's disability. The annual goal statement should address needs to enable the child to be involved in and progress in the general curriculum and to meet other educational needs that result from the child's disability. An annual goal statement is measurable and includes a level of attainment that the child can be reasonably expected to achieve at the end of 12 months. Benchmarks describe the amount of progress the child is expected to make within specified segments of the year. Short-term objectives break the skills described in the annual goal into discrete components that are measurable intermediate steps. An IEP team may use either benchmarks or short-term objectives or both.

Finding. Results of the department's onsite compliance reviews during 2001-2002 suggest improving compliance with the requirement to include measurable annual goal statements in IEPs. Some IEPs do not include measurable annual goal statements with specific levels of attainment that children reasonably can be expected to achieve at the end of 12 months. The annual goals are not 12-month goals; rather, they are multi-year or lifetime goals, e.g., "improve reading" or "exhibit age-appropriate behavior." Further, the associated benchmarks or short-term objectives do not include expected levels of attainment.

IEP Services

Requirement. The IEP must include a statement of the special education and related services and supplementary aids and services and program modifications or supports for school personnel that will be provided for the child. The amount of services must be stated in the IEP so that the level of the LEA's commitment of resources is clear. If it is inappropriate to state the amount of service by stating an amount of time, the IEP may describe the circumstances under which the service is needed. For example, if a student requires oral administration of tests, the IEP may state "tests in English and social studies to be administered orally" or "all tests at an instructional reading level above 6th grade to be administered orally." Also the IEP must include the anticipated frequency, location, and duration of the services. The location of services generally refers to the type of environment that is the appropriate place for the provision of the service, e.g., "resource room" or "regular classroom."

Finding. Some IEPs do not include either clear statements of the amount of services or the frequency of services. IEPs indicate that services will be provided "as needed." This description was commonly found for supplementary aids and services and program modification or supports for school personnel. Such statements do not make clear the LEA's level of commitment of resources. In 2001-2002, this error was increasingly seen with the use of modification checklists, which were appended to IEPs. The 2001-2002 onsite compliance review results suggest improving compliance with the requirement to indicate the location (type of environment) for the provision of a particular service. However, errors continue.

Participation in the Regular Education Environment and the General Curriculum

Requirement. Another area of confusion revealed by the department's reviews relates to the requirement that the IEP include an explanation of the extent, if any, to which the child will not participate in the regular education environment and in the general curriculum (the curriculum taught to nondisabled children). Both elements must be considered by the IEP team and clearly addressed in the IEP. For example, a child may be full time in the regular education environment and receive a replacement curriculum full time, instead of receiving the regular curriculum. Conversely, a child may be removed to a special education resource room and receive the regular education curriculum with modifications during that time. The general curriculum issue is addressed in the department's model forms on Form I-11. The participation in the regular education environment is addressed in the department's model forms on Form I-14 (2).

Finding. Results of 2001-2002 onsite compliance reviews suggest more LEAs are implementing correctly the requirement to explain the extent of children's nonparticipation in the general curriculum. However, errors continue. Some IEPs do not contain statements that clearly distinguish between the extent of the child's nonparticipation in the regular education environment (an environment with nondisabled peers) and the extent of nonparticipation in the general curriculum.

Transition to Postsecondary Life

Requirement. Beginning at age 14 (or younger if determined appropriate by the IEP team) and annually thereafter, the IEP must include a statement of transition-service needs that focuses on the student's courses of study needed to prepare for a successful transition to postsecondary life. An explanation of this requirement is found in an appendix to the IDEA regulations at 34 CFR 300, Appendix A, question 11, page 12,474. The regulations can be accessed on the Internet at http://ideapolicy.org/IDEA%2097/pmp_idea_97.htm.

To meet the requirement, the IEP team must determine what instruction and educational experiences are needed to assist the student to prepare for transition to postsecondary life. The statement of transition-service needs in the IEP should relate directly to the student's goals beyond secondary school and show how planned studies are linked to these goals. For example, one student is interested in studying computer programming after high school, while another student needs to learn to live independently in the community. The statement in the first student's IEP would indicate that the student will take courses in computer technology to prepare him to attend technical college. The other student's IEP would state that the student will have instruction in skills of daily living in order to reach the goal of living independently in the community after high school.

Finding. In 2000-2001, the requirement for a statement of transition-service needs that focuses on the student's courses of study was the one most frequently cited as an error. Results of 2001-2002 onsite compliance reviews suggest improving compliance with this requirement. However, errors continue. Some statements of transition service needs do not identify courses of study. While other statements of transition-service needs identify courses of study, they fail to explain why the planned studies are important for achieving students' postsecondary goals or even mention postsecondary goals.

Placement Determined At Least Annually

Requirement. The educational placement of a child with a disability must be determined at least annually. Therefore, an IEP team must meet to determine a child's educational placement within one year of the last IEP team meeting to determine the child's educational placement.

Finding. Some LEAs failed to ensure that IEP teams met at least annually to determine children's educational placements. LEAs erred by arranging meeting dates based upon the dates of notices of placement, rather than the dates of the last IEP team meetings to determine placements.

Reporting Progress of Children with Disabilities to Parents

Requirement. The law requires that the parents of a child with a disability be informed of their child's progress at least as often as parents of nondisabled children. Further, the law requires that the parents be informed of: (1) the child's progress on IEP annual goals and (2) the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year. Descriptions of progress such as "emerging" or "making progress" alone do not meet the requirement, because they do not address the sufficiency of the progress.

Finding. Some LEAs erred by addressing this requirement by sending home grades in subject areas on report cards that do not address progress on annual goals or the sufficiency of that progress. Other LEAs informed

parents periodically about progress on annual goals, but failed to include whether the progress was sufficient to enable the child to achieve the goals by the end of the year.

Questions about this bulletin may be directed to Jack Frye-Osier, Assistant Director of Special Education, at (608) 266-1781.

evw

Enclosure

This information update can also be accessed through the Internet:

<http://www.dpi.state.wi.us/dpi/dlsea/een/bulindex.htm>

SCHOOL DISTRICT OF [name of school district]
NOTICE OF CHILD FIND ACTIVITY
[Place prior to any major child find activity]

This notice also appears in this publication in [names of other languages] languages.

The school district must locate, identify, and evaluate all resident children with disabilities, including children with disabilities attending private schools, regardless of the severity of their disabilities. The school district has a special education screening program to locate and screen all children with suspected disabilities who are residents of the district and who have not graduated from high school. Upon request the school district will screen any resident child who has not graduated high school to determine whether a special education referral is appropriate. A request may be made by contacting (name), Director of Special Education, (name of school district), at (phone number), or by writing him/her at (address).

Annually the district conducts developmental screening of preschool children. *(Note: This paragraph is sample language. Modify this paragraph to describe the school district's screening program.)* Each child's motor, communication, and social skills are observed at various play areas. Each child is weighed and measured, and the child's hearing and vision is checked. The information is used to provide the parent with a profile of their child's current development and to provide suggestions for follow-up activities. Parents learn about community services available to them and speak with representatives of agencies serving families. The information from screening is also used to determine whether a child should be evaluated for a suspected disability. When school staff reasonably believe a child is a child with a disability, they refer the child for evaluation by a school district Individualized Education Program (IEP) team. Developmental screening will be part of the kindergarten screening this spring. Watch for the dates at your local school.

A physician, nurse, psychologist, social worker or administrator of a social agency who reasonably believes a child brought to him or her for services is a child with a disability has a legal duty to report the child to the school district in which the child resides. Before referring the child, the person making the referral must inform the child's parent that the referral will be made. The referral must be in writing and include the reason why the person believes the child is a child with a disability. Others who reasonably believe a child is a child with a disability may also refer the child to the school district in which the child resides. A referral of a child residing in the (name of school district) may be sent to (name) at the school district address above.

The school district maintains pupil records, including information from screening and special education referral. All records directly related to a student and maintained by the school district are pupil records. They include records maintained in any way including, but not limited to, computer storage media, video and audiotape, film, microfilm, and microfiche. Records maintained for personal use by a teacher and not available to others and records available only to persons involved in the psychological treatment of a child are not pupil records.

The school district maintains several classes of pupil records.

- "Progress records" include grades, courses the child has taken, the child's attendance record, immunization records, required lead screening records, and records of school extra-curricular activities. Progress records must be maintained for at least five years after the child ceases to be enrolled.
- "Behavioral records" include such records as psychological tests, personality evaluations, records of conversations, written statements relating specifically to the pupil's behavior, tests relating specifically to achievement or measurement of ability, physical health records other than immunization and lead screening records, law enforcement officers' records, and other pupil records that are not "progress records." Law enforcement officers' records are maintained separately from other pupil records. Behavioral records may be maintained for no longer than one year after the child graduates or otherwise ceases to be enrolled, unless the parent specifies in writing that the records may be maintained for a longer period of time. The school district informs parents when pupil records are no longer needed to provide special education. At the request of the child's parents, the school district destroys the information that is no longer needed.
- "Directory data" includes the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, photographs, degrees and awards received, and the name of the school most recently previously attended by the student.
- "Pupil physical health records" include basic health information about a pupil, including the pupil's immunization records, an emergency medical card, a log of first aid and medicine administered to the pupil, an

athletic permit card, a record concerning the pupil's ability to participate in an education program, any required lead screening records, the results of any routine screening test, such as for hearing, vision or scoliosis, and any follow-up to the test, and any other basic health information, as determined by the state superintendent. Any pupil record relating to a pupil's physical health that is not a pupil physical health record is treated as a patient health care record under sections 146.81 to 146.84, Wisconsin Statutes. Any pupil record concerning HIV testing is treated as provided under section 252.15, Wisconsin Statutes.

The Family Educational Rights and Privacy Act (FERPA), the Individuals with Disabilities Education Act (IDEA), and section 118.125, Wisconsin Statutes, afford parents and students over 18 years of age ("eligible students") the following rights with respect to education records:

- **The right to inspect and review the student's education records within 45 days of receipt of the request.** Parents or eligible students should submit to the school principal [or appropriate school official] a written request that identifies the records(s) they wish to inspect. The principal will make arrangements for access and notify the parent or eligible student of the time and place where the records may be inspected. The school district will comply with the request without unnecessary delay and before any meeting about an individualized education program, or any due process hearing, and in no case more than 45 days after the request has been made. If any record includes information on more than one child, the parents of those children have the right to inspect and review only the information about their child or to be informed of that specific information. Upon request, the school district will give a parent or eligible student a copy of the progress records and a copy of the behavioral records. Upon request, the school district will give the parent or eligible student a list of the types and locations of education records collected, maintained, or used by the district for special education. The school district will respond to reasonable requests for explanations and interpretations of the records. A representative of the parent may inspect and review the records.
- **The right to request the amendment of the student's education records that the parent or eligible student believes is inaccurate or misleading.** Parents or eligible students may ask [Name of] School District to amend a record that they believe is inaccurate or misleading. They should write the school principal, clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading. If the district decides not to amend the record, the district will notify the parent or eligible student of the decision and the right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.
- **The right to consent to disclosures of personally identifiable information in the student's education records, except to the extent that federal and state law authorize disclosure without consent.** The exceptions are stated in 34 CFR 99.31, Family Educational Rights and Privacy Act regulations; Sec. 9528, PL107-110, No Child Left Behind Act of 2001; and section 118.125(2)(a) to (m) and sub. (2m), Wisconsin Statutes. One exception that permits disclosure without consent is disclosures to school officials with legitimate educational interests. A school official is a person employed by the district as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel); a person serving on the school board; a person or company with whom the district has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist); or a parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility. Upon request, the district discloses education records without consent to officials of another school district in which a student seeks or intends to enroll. Also the district discloses "directory data" without consent, unless the parent notifies the district that it may not be released without prior parental consent.
- **The right to file a complaint with the U. S. Department of Education concerning alleged failures by the District to comply with the requirements of FERPA.** The name and address of the Office that administers FERPA is: Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, DC 20202-4605.

6/24/02